THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Criminal Appeal No. 1047 of 2001(old No 1753 of 82)

1 Jhagar Singh s/o Kalam Singh (since deceased)
2 Khilap Singh s/o Jhagar Singh (since deceased)
3 Dulap Singh s/o Ratan Singh
4 Jawhar Singh s/o Ganga Singh
All residents of village Silodi, Patwar Circle
Aser Simali, The Karanprayag
District Chamoli. Appellants.

Versus

State of Uttar Pradesh opposite party.

Hon'ble B.C. Kandpal,J

This Criminal Appeal is arising out against the judgment and order dated 6.7. 1982 passed by Sessions Judge ,Chamoli in sessions trial No.4 of 1982 convicting and sentencing the appellants under Section 394 IPC for a period of two and a half years ,rigorous imprisonment.

Brief facts of the prosecution case are that complainant and the appellant have got their cultivation and hut in Simar Toke of village Silodi where they used to keep their cattle for about six months in a year. The cattle of Bhawan Singh,(informant)were in his huts in Simar Toke from prior to 25.10.1978 .During these days infectious ,Khuriya decease was prevalent in the cattle in village Silodi.

On 25.10.1978 at about 10 A M, Jhagar Singh accused and his son Khilap Singh accused brought their cattle from village Silodi to their huts in Simar Toke.They were accompanied by Dulap Singh

and Jawahar Singh accused. The complainant Bhawan Singh raised objection on the ground of the prevalence of infectious disease of Khuriya in the cattle of village Silodi., which resulted in the exchange of harsh words from both sides , whereupon Jhagar Singh gave a blow by the back of his axe to Bhawan Singh on his head and Khilap Singh,Dulap Singh and Jwahar Singh beat him with Lathis.

This occurrence was witnessed by Sher Singh and Ram Singh who were doing chiran work of the contractor. As per the prosecution case, thereafter Jhagar Singh with his three associates entered into the nearby cowshed of Bhawan Singh and looted his licensed muzzle loading gun and other articles from there.

The complainant Bhawan Singh directly went to the hospital at Chamoli where he was Examined by Dr. R C S Sayana on 26.103. 1978 at 4.45 PM, who found three simple injuries on his person. The complainant after his discharge from the hospital lodged a complaint on 3.11. 1978.

Jhagar Singh, Khilap Singh ,Dulap Singh and Jawhar Singh accused were summoned before the Munshif Magistrate Karanprayag and they were discharged vide order dated 16.4. 1980. Thereafterater revision was preferred and the revisionl court set aside the order and sent the matter back .The court below thereafter found that the matter was triable by the court of Sessions and committed the same to the Sessions Court .After the accused/ appellants were committed to the court of sessions, the learned Sessions Judge framed charges under Section 394 IPC against them.

The accused /appellants denied all the charges leveled against them and claimed their trial.

The prosecution in support of their case produced PW 1, Bhawan Singh(informant), Dr.R.C.S.Sayana, PW 2. C W 1 Jaspal Singh and CW 2 Dr. G.D. Misra.

The prosecution also produced the statement of Sher Singh and Ram Singh as an eye witness as Ex. Ka 5 and Ex Ka 6.

After the evidence of the prosecution was over , the statement of the accused /appellants were recorded under Section 313 of Cr.P.C.

The accused /appellants did not adduce any evidence in their defence.

The learned trial court after having perused the entire evidence on record and hearing the learned counsel for the parties was pleased to convict the accused Jhagar Singh, Khilap Singh, Dulap Singh and Jawhar Singh under Section 394 IPC and sentenced them for 2 ½ years rigorous imprisonment vide judgment and dated 6.7. 1982.

Feeling aggrieved by the aforesaid judgment and order of conviction the appellants/ accused had preferred this appeal before the Hon'ble High Court of Judicature at Allahabad, which has subsequently been transferred for disposal to this Court after creation of the new State.

Heard , Shri Lokendra Dobhal learned counsel for the appellants, learned AGA and perused the record.

It is important to mention here that appellant Jhagar Singh and Khilap Singh have been reported dead during the pendency of the appeal. The report of the concerned CJM is available on record in this regard and after having considered the report of death, the appeal against Jhagar Singh and Khilap Singh, appellants No.1 and 2 is abated .However, on the basis of arguments advanced by the learned counsel for the parties as well as evidence on record, I

decide the appeal on behalf of remaining two appellants/ accused, Dulap Singh and Jawahar Singh.

There is no denial of the fact and it is admitted case that both sides have got their cultivation and huts in Simar Toke in village Silodi where they used to keep their cattle for about six months in a year. The cattle of Bhawan Singh (complainant) were in village Silodi in his huts in Simar Toke , prior to 25.10.1978 and it is also admitted case that in those days infectious dieses Khuriya was prevalent in the cattle of village Silodi. Thereafter as far as the factum of MARPIT and injury is concerned, it cannot be denied that there was some scuffle in between the parties and during this scuffle, Bhawan Singh might have sustained injuries on his person.

Bhawan Singh was medically examined by Dr. R.C.S.Sayana, PW 2 on 26.10.1978 at 4.45 PM who found three injuries on the person of Bhawan Singh .The Doctor found all those injuries simple. But merely on this aspect that Bhawan Singh sustained injuries on his person during the course of incident, it cannot be inferred that offence under Section 394 IPC is made out against the appellants unless, the entire evidence on record in detail is scrutinized.

The only point which is to be decided by me is whether offence under Section 394 IPC is made out against the appellants or not. The appellants were charged for having committed offence under Section 394 IPC. The case of Bhawan Singh is that the appellants assaulted him due to which he sustained injuries and thereafter the appellants looted his utensils, bedding as well as a single barrel gun. It is important to mention here that one of the appellants Jhagar Singh (since deceased) had also lodged a report against the complainant , Bhawan Singh on 26.10. 1978 stating there in that when he went at the place of occurrence on

25.10.1978 then there were some heated altercation between him and Bhawan Singh and during these heated altercation, Bhawan Singh tried to fire from his gun at him, but Jhagar Singh caught hold of him and he did not sustain injuries on account of fire. Thereafter Jhagar Singh snatched the gun from Bhawan Singh and deposited the same with the Patwari on 26.10.1978 . Although the case of Jhagar Singh was disbelieved by the court below and the case of Bhawan Singh has been taken note of. But in order to take judicial notice of the report lodged by Jhaggr Singh, it is to be kept in mind that there was some scuffle between the parties in which gun of Bhawan Singh was snatched or looted by the appellants. It is therefore to be seen whether the present appellants are held responsible for committing offence under Section 394 IPC or not.

In this regard this fact is to be kept in mind that as per report of Jhaggar Singh gun was snatched by him, so in case, if the gun has been snatched by Jhagar Singh than case under Section 394 IPC is not made out. However, if the statement of Bhawan Singh is perused then it reveals that he has stated in his deposition that the gun was in the hand of Khilap Singh. It is pertinent to mention here that Khilap Singh is also dead.

Bhawan Singh in his statement before the Magistrate has stated that the gun had been taken by Khilap Singh (since deceased).Therefore in view of the statement of Bhawan Singh it can be gathered safely, that either the gun had been taken away by Jhagar Singh or by another appellant Khilap Singh .As both these appellants are dead, therefore it is to be seen whether the appellants who are alive i.e Dulap Singh and Jawahar Singh can be held responsible for committing offence under Section 394 IPC or not .

The occurrence is alleged to have taken place on 25.10.1978 at about 10 AM. The complainant Bhawan Singh lodged the

complaint before the court on 3.11. 1978 i.e. after a delay of about eight days and the complainant has not extended any sufficient explanation either in his complaint or in his deposition before the court below, therefore this un-explained and delayed complaint before the court below creates a doubt about the prosecution case.

The complainant in his deposition has stated that after sustaining the injuries he straightaway went to the hospital instead of going to patwari chauki . He has stated that his nephew Gopal accompanied him to the hospital and he remained there for three days, thereafter he went to his house. This witness, Bhawan Singh has further deposed that he did not ask his nephew to lodge report at Patwari Chauki. It has further been stated by Bhawan Singh that on the way from village Silodi to Gopeshwer there are two hospitals one at Narayanbagarh and another at Karanprayag. However, this witness did not get himself examined in either of these two hospitals and instead went to Chamoli for his medical examination .

This unexplained delay is giving a serious jolt to the prosecution case and this situation cannot be ignored that there was some scuffle between the two parties and during that scuffle, the gun of complainant, Bhawan Singh was snatched and it was subsequently handed over to the Patwari by Jhagar Singh appellant (since deceased), immediately on the next day and the complainant Bhawan Singh thereafter with deliberate consultation lodged a complainant against the accused / appellant in his defence.

Having considered the evidence on record , I come to the conclusion that the prosecution case is not established with regard to the committing of robbery of a gun pertaining to Bhawan Singh . There may be a case in which cross fighting was there and Bhawan Singh must have sustained the injuries during this cross fighting, but merely by such an act when one of the deceased

accused /appellant snatched the gun from Bhawan Singh and thereafter deposited the same with the patwari immediately on the next day, the case under Section 394 I.P.C. is not made out against appellants Dulap Singh and Jawahar Singh.The appellants are therefore entitled to get the benefit of doubt in the instant case.

On the basis of the assessment of the evidence on record I come to the conclusion that appellants Dulap singh and Jawahar Singh are entitled to get the benefit of doubt as the prosecution is not successful in establishing the guilt under Section 394 IPC against these appellants.The judgment and order passed by the trial court dated 6.7.1982 is hereby set aside. The conviction and sentence imposed against the appellants by way of impugned judgment is quashed.

The appeal is allowed. The appellants Dulap Singh and Jawahar Singh are given benefit of doubt and they are accordingly acquitted of the charge under Section 394 IPC for which they have been convicted and sentenced by the court below.

Consequently the impugned judgment of the court below is set aside.

Both the appellants are on bail. They need not to surrender.

(B.C.Kandpal,J)

October 7, 2005
nbj